

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

ARTHUR HIRSCH,)	
)	
Plaintiff,)	
)	
v.)	CA NO. 5:10-cv-00134-HGD
)	
WILLIAM G. MATHEWS, et al.,)	
)	
Defendants.)	

MOTION TO DISMISS OF
TRACY LUNA AND TERRY JOHNSON

Defendants Tracy Luna and Terry Johnson move the Court to dismiss the claims alleged against them in the plaintiff's amended complaint in this case (Doc. no. 58) on the following grounds:

1. The complaint fails to state a claim upon which relief may be granted as to said defendants. See Fed. R. Civ. P. 12(b)(6).
2. All claims in the complaint arising under the First, Second, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution fail to state a claim upon which relief may be granted as to said defendants. Likewise, the Fourth Amendment claim relating to the search at the courthouse fails to state a claim.
3. Said defendants are entitled to qualified immunity from plaintiff's federal claims alleged under 42 U.S.C. § 1983.

4. Plaintiff has no maintainable claim for civil relief under 18 U.S.C. § 242, as § 242 is a criminal statute and does afford the basis for the assertion of a civil claim.¹

5. Any claim by plaintiff in this action for violation of the Alabama Constitution of 1901 is not maintainable as a matter of law. There exists no civil private right of action for a violation of the Alabama Constitution.

6. Plaintiff's remaining state law claims against said defendants must also be dismissed. Any claim by plaintiff in this action for violation of oath of office or gross negligence, or for violation of any state criminal statute or other statute providing authority for arrests fails as a matter of law.²

7. Because the Town of Ardmore is a separately named defendant in this action, the plaintiff's official capacity claims against said defendants are redundant and superfluous and are due to be dismissed.

¹ The claims brought under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 ("RICO") are not maintainable as a matter of law against said defendants. This matter is addressed in separately-filed motions to dismiss and for summary judgment.

² Further, said defendants are due qualified immunity as to the claims under the Fourth Amendment to the United States Constitution. Said defendants are entitled to state-agent discretionary function immunity as to any state law claims not addressed herein, including state law claims for trespass, assault and battery, and false arrest / imprisonment. All of these matters are addressed in a separately-filed motion for summary judgment.

s/ George W. Royer, Jr.

George W. Royer, Jr.

s/ David J. Canupp

David J. Canupp

LANIER FORD SHAVER & PAYNE, P.C.
2101 West Clinton Avenue, Suite 102
Huntsville, AL 35805
Phone: 256-535-1100
Fax: 256-533-9322
E-mail: gwr@lanierford.com & djc@lanierford.com

Attorneys for Defendants Tracy Luna and Terry Johnson

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing upon with the Clerk of the Court using the CM/ECF system and that I have served a copy of the foregoing by depositing a copy of the same in the United States mail, postage prepaid and properly addressed to:

Arthur Hirsch
3121 Buffalo Road
Lawrenceburg, TN 38464

on this the 22nd day of March, 2010.

s/ George W. Royer, Jr.

George W. Royer, Jr.